

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

J U D G M E N T

D.B. CRIMINAL JAIL APPEAL NO.746/2005
(Nand Lal & Ors. Vs. State)

**D.B. CRIMINAL JAIL APPEAL UNDER
SECTION 383 Cr.P.C. AGAINST THE
JUDGMENT DATED 15th JULY, 2005
PASSED BY THE LEARNED ADDITIONAL
SESSIONS JUDGE NO.2, CHITTORGARH
CAMP AT BEGUN IN SESSIONS CASE
NO.01/2005 – STATE OF RAJASTHAN VS
NANDLAL & OTHERS.**

DATE OF JUDGMENT : 06th FEBRUARY, 2007

P R E S E N T

HON'BLE MR. JUSTICE N.N.MATHUR
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. B.N. Sharma, Amicus Curiae for the appellant.
Mr. JPS Choudhary, Public Prosecutor.

BY THE COURT : (PER HON'BLE MR. MATHUR,J.)

1. This appeal is directed against the judgment dated 15.7.2005 passed by Additional Sessions Judge No.2, Chittorgarh Camp Begun, convicting the appellants – Nand Lal and Mukesh Kumar of offence under Section 302 IPC and sentencing each of them to imprisonment for life and to pay a fine of

Rs.1000/-, in default of payment of fine to further undergo six months imprisonment.

2. Briefly stated the prosecution case is that PW-9 Prakash Chandra S/o of deceased Modulal submitted a written first information report Ex.P-35 at police out-post Barodia Police Station Rawat Bhata stating inter alia that he along with his deceased father Modulal had gone to the field for grazing cattle. While they were in the field known as Khajuria along with cattle, at about 8 a.m. the first appellant Nand Lal and his son second appellant Mukesh Kumar arrived with three cattle. They reprimanded his father Modulal for not taking their cattle for grazing, which was retorted by his father that they had not paid him the charges for grazing for last three to four months. Such a reply was not acceptable to both the appellants and as such they lost the temper and left the field threatening that they would not live them alive. Both of them returned after 15 minutes, appellant Nand Lal was carrying a stick and Mukesh a 'gandasa' in their hand. Both of them mounted attack on his deceased father Modulal. He raised voice which attracted the neighbors namely PW-10 Bihari Lal, PW-11 Ganga Ram and PW-12 Jagdish. His father sustained injuries almost on all parts of the body. He died on the spot. Ganga Ram, Jagdish and Biharilal and other villagers took him to the

village Barodia.

3. On this information, police registered a case for offence under Sections 302 and 302/34 I.P.C. and proceeded with the investigation. The autopsy was conducted on the dead body by PW-8 Dr. Gangu Jivaji Parmar vide post-mortem report Ex.P-33. He also noticed the injuries vide Ex.P-34. The injuries on the dead body of Modulal are extracted as follows :

"Ante-mortem injuries follows:

I. Lacerated wound – 3.0 cm x 1.0 cm – bone depth at occipital region c linear fracture of occipital bone.

II. Contusion 10 cm x 3 cm – Rt shoulder. Supra aspect.

III. Contusion 10 cm x 3 cm – Rt scapular supra scapular region.

IV. Contusion 12 cm x 3 cm – Rt infra scapular region.

V. Contusion 10 cm x 3 cm – Left shoulder supra aspect.

VI. Contusion 10 cm x 3 cm – Left supra scapular. Extending to left shoulder.

VII. Contusion 8 cm x 3 cm – Left scapular extending from upper to lower border.

VIII. Multiple contusions 16 cm x 8 cm infra scapular region back of chest. Extending from lower c haematome. Border of Left scapula to lumbar region left. c Lacerated wound within contusion & Haematome. Depth of laceration is muscle deep. Size of laceration 1 cm x ½ cm x MS Deep – Dark Blood comes out from

lacerated wound. On Dissection of injury – Dark clotted blood present in chest cavity. Multiple lacerations of left lung – post aspect of lung. Haemothorex left side c # 6th, 7th, 8th and 9th rib's at post side i.e. Back of chest.

IX. Contusion 6 cm x 3 cm ante side of chest at left costal region just lateral to midline.

X. Lacerated wound 5 cm x 2 cm x bone deep shin of Rt Leg.

XI. Lacerated wound 8 cm x 2 cm x bone deep – shin of Rt Leg 1" below injury No. X – middle 1/3 of leg.

XII. Contusion 6 cm x 4 cm – calf of Rt leg.

XIII. Contusion o Haematome 6 cm x 6 cm shin of left leg.

XIV. Multiple Contusion within the are of left calf region.

XV. Abrasion 4 cm x 4 cm ante aspect of left knee.

XVI. Abrasion 4 cm x 4cm ante aspect of Rt knee.

XVII. Contusion 6 cm x 4 cm anterior lat aspect of Rt arm.

XVIII. Contusion c abrasion 5 cm x 4 cm Posterior left aspect of Rt elbow.

XIX. Contusion c Hameatoma c swelling 6 cm x 6 cm Rt forearm just above wrist c # Rt radius & ulna bones lower 1/3 rt forearm.

XX. Contusion c abrasion 10 cm x 8 cm Rt gluteal region.

XXI. Contusion c abrasion 10 cm x 6 cm Left gluteal region.

In the opinion of the Doctor, the cause of death was multiple injuries along with chest injury i.e. Lacerations of left lung at its post aspect & haemothorax, left side which led to shock, sufficient to cause death in normal course of nature.

4. After usual investigation, the police laid charge-sheet against the appellants for offence under Sections 302 and 302/34 IPC. The appellants denied the charges levelled against them and claimed trial. During trial, the prosecution adduced oral and documentary evidence in support of the case. The appellants in their statement recorded under Section 313 of the Code of Criminal Procedure denied the correctness of the prosecution evidence appearing against them. The trial court having found the prosecution case proved against the appellants, convicted and sentenced them in the manner stated above.

5. We have heard learned counsel for the appellants, learned Public Prosecutor and perused the record carefully.

6. The entire prosecution case rests on the ocular evidence of PW-9 Prakash, PW-10, Bihari Lal, PW-11 Ganga Ram and PW-12 Jagdish.

7. PW-9 Prakash is the son of deceased Modlal. He stated that

he along with his father Modulal arrived in the field known as 'khajuria' along with cattle. While cattle were grazing, the appellants Nand Lal and Mukesh Kumar with three cattle arrived. Appellant Nandlal was carrying a 'lathi' in his hand whereas appellant – Mukesh Kumar, a 'gandasa'. Nandlal threatened his father that if he does not take his cattle for grazing, he would be killed. Nandlal mounted attack on Modulal by inflicting injuries by 'lathi'. Mukesh inflicted injuries by 'gandasi'. Both of them gave merciless beating to the deceased. He raised voice for help which attracted Bihari, Jagdish, Ganga Ram and other villagers. They took the dead body to the Barodia out-post. He got the first information written from PW-19 Balu Mohammad. On the basis of the said report, the FIR Ex.P-35 was lodged. There is a lengthy cross-examination but nothing substantial has been elicited to discredit the testimony of this witness. Learned counsel has pointed out certain infirmities in the statement of this witness but they are of trivial nature.

8. PW-10 Biharilal stated that at the time of incident, he was in the field. Hearing the cries of Modulal, he rushed to the spot. Nothing substantial has been elicited to discredit the testimony of this witness.

9. The statements of PW-11 Ganga Ram and PW-12 Jagdish are almost in the same line. The cross-examination of both of these witnesses is directed towards the fact that before they could reach on the spot, the accused persons had left as such they had not witnessed the incident. Both the witnesses in terms have stated that they have seen both the appellants causing injuries to deceased Modu Ram. There is no reason to discredit the testimony of PW-9 Prakash. He is straightforward and natural witness. His statement finds corroboration from the statement of PW-10, PW-11, PW-12 and the medical evidence referred to above.

10. The appellant Nandlal was arrested vide Ex.P-25. 'Dhoti' and Shirt, which the appellant was wearing at the time of incident were seized vide Ex.P-26. They were found to be stained with the human blood as per the FSL report. As per Ex.P-26, there is an explanation of presence of blood on 'dhoti' to the effect that the dead body of Modu Ram was carried in the 'dhoti' of the appellant Nandlal. Even if this part of the evidence is excluded, there is another evidence of recovery of blood stained 'lathi', in pursuance of the information given by the appellant vide Ex.P-44. The blood stained 'lathi' was recovered vide Ex.P-28 in presence of 'motbir' PW-5 Durga Shankar. As per the FSL report, Ex.C-1, the 'lathi' was stained

with human blood. The appellant Nand Lal has failed to give any explanation as to the presence of blood on the 'lathi'.

11. Similarly, appellant Mukesh Kumar was arrested vide Ex.P-27 on 13.11.2004. The police seized his pant and shirt vide Ex.P-28. As per the FSL report, both the pant and shirt were stained with human blood. The appellant Mukesh Kumar has failed to give any explanation as to the presence of the blood on his cloths. Similarly, the blood stained 'gandasa' was recovered vide Ex.P-31, in pursuance of the information given by appellant Mukesh vide Ex.P-45. As per the FSL report Ex.C-1, the 'gandasa' was stained with human blood. The appellant Mukesh has failed to give any explanation as to the human blood on 'gandasa'.

12. Thus, on careful consideration of the entire evidence on record, we do not find that there is a overwhelming evidence ocular and circumstantial against the appellants to hold that they committed the murder of Modu Ram. The injuries on the person of deceased show that both the appellants gave merciless beating to the deceased. Thus, they have been rightly convicted and sentenced of offence under Section 302 I.P.C. No interference is warranted with the judgment of the trial court.

13. Consequently, the appeal being devoid of merit stands dismissed. Both the appellants are in jail. They will serve out the remaining part of the sentence.

(GOPAL KRISHAN VYAS) J.

(N.N. MATHUR) J.

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